



United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

March 1, 2022

BY ECF

Hon. Paul A. Crotty  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St.  
New York, NY 10007

*Re:     NPR et al. v. CENTCOM, 21 Civ. 10511 (PAC)*

Dear Judge Crotty,

In accordance with the Court's direction in its docket notice dated January 25, 2022, counsel for Plaintiffs National Public Radio, Inc. and Hansi Lo Wang ("Plaintiffs") and Defendant the United States Central Command ("CENTCOM") respectfully submit this joint letter in this action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

This case concerns two consolidated FOIA requests submitted by Plaintiffs to CENTCOM in July 2021, seeking records concerning allegations of civilian harm resulting from airstrikes conducted in October 2019 to kill or capture Abu Bakr al-Baghdadi. Plaintiffs filed the complaint in this action on December 8, 2021, ECF No. 1, and Defendant filed an answer on January 12, 2022, ECF No. 14.

CENTCOM has completed its search for records responsive to the FOIA request and located approximately 471 potentially responsive documents, totaling about 1989 pages, and 20 videos. These document and page counts are estimates, as the collection of records is likely to contain duplicates and other non-responsive documents or pages.

CENTCOM proposes to process the non-video records at a rate of 300 pages every 60 days, with the first production to be made by May 2, 2022.<sup>1</sup> CENTCOM notes that the process of reviewing and processing records of the type requested by Plaintiff is time-consuming and complex. Because the records reside on classified systems, they cannot be accessed remotely and can only be reviewed in person. The review process involves multiple steps. First, the records identified in the searches must be reviewed for responsiveness. Second, CENTCOM must process the responsive records to identify non-exempt information that can be produced under FOIA. For each production of approximately 300 pages, the records must be reviewed and

<sup>1</sup> CENTCOM has been processing records at the same rate—300 pages every 60 days—in another case involving a FOIA request to CENTCOM for records relating to reports of civilian casualties. See *Khan v. Dep't of Defense et al.*, 18 Civ. 5334 (DLC).

processed and/or approved by: (1) subject matter experts (“SMEs”), who identify classified and other sensitive information in the records, (2) FOIA processors, who identify other exempt information, apply FOIA exemptions, and prepare a proposed redacted version of the production set, (3) CENTCOM’s legal staff, which conducts a legal review of the proposed redacted version and in some cases requests additional review and processing by SMEs and FOIA staff, (4) the Office of Secretary of Defense (“OSD”), which must review and approve the proposed production set, and (5) the Initial Denial Authority (“IDA”), a 2-star general who serves as CENTCOM’s Chief of Staff, who must make a final declassification determination with regard to the redacted records before they can be produced to Plaintiffs. In some cases, records need to be referred to other agencies or DoD components for consultation. Based upon a preliminary review, consultations or referrals will be necessary with the United States Special Operations Command (“SOCOM”) and potentially the United States Army Central Command (“ARCENT”), in addition to OSD.

Given the unique circumstances of the case at this time, Plaintiffs do not currently oppose this processing schedule.

The parties respectfully propose to provide the Court with a further status report on or before May 9, 2022. We thank the Court for its consideration of this letter.

Respectfully submitted,

DAMIAN WILLIAMS  
United States Attorney  
for the Southern District of New York

3/2/2022

A status report is due on May 9, 2022.  
SO ORDERED.



/s/ Sarah S. Normand  
Sarah S. Normand  
Assistant U.S. Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Telephone: (212) 637-2709  
Sarah.Normand@usdoj.gov

*Counsel for Defendant*

DAVIS WRIGHT TREMAINE LLP

/s/ Robert D. Balin  
Robert D. Balin  
1251 Avenue of the Americas, 21<sup>st</sup> Floor  
New York, New York 10020  
Telephone: (212) 489-8230  
robbalin@dwt.com

*Counsel for Plaintiffs*